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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/351,544	07/12/1999	TIMOTHY K. CARNS	ZIL-204	9910

7590 03/31/2004

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EXAMINER	
BROCK II, PAUL E	

ART UNIT	PAPER NUMBER
2815	

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/351,544	CARNS ET AL.	
	Examiner	Art Unit	
	Paul E Brock II	2815	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *3-11,39,72-74 and 102-108*.

   Claim(s) withdrawn from consideration: *109-114*.
8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Tom Thomas

Continuation of 5. does NOT place the application in condition for allowance because: With regard to applicant's arguments that the U.S.C 103 rejection "relies on three sources of teachings: Takahashi, Bencher and the so-called AAPA. One of the three sources, the so-called AAPA, is in fact not prior art and would not have been available to one of ordinary skill in the art. The Examiner's use of Applicants' teachings is evidence of the shortcomings of the teachings in the prior art. Accordingly, the 103 rejection is an impermissible hindsight obviousness rejection. Reconsideration without the use of Applicants' teachings is requested;" it should be noted that "the so-called AAPA" or more properly, the applicant's admitted prior art (AAPA) is available for use in the rejection. Further, the applicant's admitted prior art is clearly just that, admitted prior art. For example, in the originally filed specification, under the heading "Background of the Invention", applicant states on page 2, line 26 - page 3, line16 a "standard embodiment" which includes steps "9. Upper electrode etch" and "10. Capacitor dielectric removal." Further, under the "Background of the Invention" section on page 4, lines 21 - 26 "The problem in this process as found in the prior is in the juxtaposition of step 10 with step 11: It is this combination of the dielectric removal with the application of an anti-reflective layer having poor insulation properties that is detrimental to the capacitors. This problem is that step 10 not only removes the unwanted capacitor dielectric, but will also undercut into the wanted portion below the upper electrode. This situation is shown in Figure 3." These citations, along with at least the rest of the "Background of the Invention" section from page 1 - page 6, line 15 discloses only prior art. The invention serves to fix the problems that have been identified in the prior art "Background of the Invention" section. The main problem identified in the applicant's admitted prior art section is the undercutting of the dielectric layer in step 10 of the process flow, and the subsequent filling of the undercut by an anti-reflective layer. The final rejection only uses this known undercut whish is clearly disclosed by the applicant as known prior art. Thus, the final rejection properly uses what was admitted by the applicant as known before the invention was filed. This AAPA, along with Takahashi and Bencher constitutes a proper U.S.C 103 rejection. Therefore, applicant's arguments are not persuasive, and the rejection is proper.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).